Civil Writ Petition No.7186/2003
Sandeep Kumar Vs. State of Rajasthan & Ors
Date of Order ::: 12/12/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. Akhil Simlote) for petitioner
Mr. J.K.Agrawal, Addl.Govt.Adv. For the State

With consent of parties, writ petition is finally disposed of at admission stage.

Petitioner, who was finally selected in the selection process held in 1997 for the post of Constable and was offered appointment vide order dt.20/11/02 but was not permitted to join merely on the pretext that he became over age on 04/07/01 in terms of Rajasthan Police Subordinate Service Rules, 1989.

Counsel for petitioner contends that petitioner being eligible and participated in selection process held in December, 1997 when indisputably, he was within age as per R.11 of Rules, 1989 and after he participated in selection process and placed in order of merit, was not considered for appointment,as such approached this Court by way of CWP No.4137/98, during pendency of which, order was issued on 20/11/02, as such he withdrew writ petition, yet when he was not permitted to join, he served legal notice of demand for justice, which was responded vide letter dt.17/10/03, (Ann.4) wherein it was admitted that he was placed at S.No.33 in select list, of course, being eligible for appointment but on the date of issuance of order, he became over-age, as such matter has been sent to the State Govt., for seeking relaxation in view of R.11(3) of the Rules, 1989.

Counsel contends that his age which is one of eligibility conditions was required to be looked into at the time of advertisement and he was admittedly

within age when he was selected and merely because the time was consumed in passing final order of appointment, that will not make him disentitled from seeking appointment under the garb of having become overage.

Reply to writ petition has been filed by respondents while not disputing the fact of eligibility and participation in process of selection by petitioner, but it has inter alia been averred that he was denied appointment as he became over age on 04/07/01 in terms of appointment order (Ann.2).

I have considered rival contentions of parties and with their assistance, examined the material on record. Eligibility of an incumbent, who participated in selection process has to be considered as per terms of advertisement. Indisputably, in selection process petitioner was found eligible as per R.11 of Rules, 1989, and finally selected for thepost of constable. Merely because appointment order was issued at a later point of time, that in my pinion will not hold him ineligible from seeking appointment. Very premises on which the respondents have denied him of appointment, is uncalled for and certainly violates his fundamental right of consideration for appointment under Art.14 of the Constitution of India.

Counsel for petitioner informed that all other persons who participated in selection process alongwith petitioner, and referred to in Ann.2 dt.20/11/02 have been given appointment and select list has been carried out in its true spirit.

Consequently, this writ petition is allowed and respondents are directed to allow the petitioner for joining duties on the post of Constable pursuant

appointment order dt.20/11/02 with all consequential benefits under relevant Service Rules, including continuity of service, seniority as per his placement in order of merit and notional fixation of pay etc. but he will not be entitled for arrears of pay for intervening period during which he did not work. All exercise to comply with the order be made within one month. No costs.

(Ajay Rastogi), J.

K.Khatri/7186CWP2003.

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